

HOUSE BILL NO. 263

INTRODUCED BY LANGE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A UNIFORM PUBLIC COMPLAINT PROCESS FOR STATE AGENCIES; AND PROVIDING A UNIFORM COMPLAINT FORM AND FOLLOWUP FORM."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "State Agency Public Complaint Act".

NEW SECTION. Section 2. Findings and purpose. The purpose of [sections 1 through 6] is to require state agencies to develop a uniform public complaint process to ensure that persons having complaints against state agencies are treated fairly and professionally, to facilitate the resolution of complaints against state agencies, to enable a state agency to investigate, resolve, and track complaints against it, and to create a record of complaints and their resolution at the administrative level.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) (a) "Act" or "action" means an action taken or the refusal to take an action by a state agency.

(b) The term does not mean:

(i) any action taken in litigation in which a government entity is a party;

(ii) an act for which a citation or warning is issued;

(iii) a legislative act by the state of Montana;

(iv) an action subject to the provisions of Title 39, chapter 2, part 9; or

(v) development, amendment, or repeal of a rule as defined in 2-4-102 or any action taken in an administrative proceeding under Title 2, chapter 4.

(2) "State agency" means any board, bureau, commission, or department of the legislative, executive, or judicial branch of state government except:

(a) the state board of pardons and parole;

(b) the department of corrections and any state penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837;

(e) the legislature, including the house of representatives and the senate, with regard to legislative acts;

(f) the supreme court and district courts of the state with regard to litigation before the court; and

(g) the Montana highway patrol.

(3) "Supervising authority" means:

(a) the governor or the governor's designated representative for executive branch agencies, except as provided in subsection (3)(b);

(b) the secretary of state, attorney general, auditor, and superintendent of public instruction for each elected official's respective office and agency AND THE PUBLIC SERVICE COMMISSION WITH RESPECT TO THE DEPARTMENT OF PUBLIC SERVICE REGULATION;

(c) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(d) the speaker for the house of representatives;

(e) the president for the senate; or

(f) appropriate legislative committees, or a designated representative, for legislative branch agencies.

NEW SECTION. Section 4. Procedure -- NONAPPLICABILITY. (1) Each state agency shall post information about the public complaint process in a prominent place in any office open to public access and make the uniform complaint form available upon request.

(2) The provisions of [sections 1 through 6] do not:

(A) preclude a state agency from resolving complaints informally; OR

(B) APPLY TO AN ACT OR ACTION SUBJECT TO A COMPLAINT RESOLUTION PROCESS PROVIDED FOR IN LAW, CONTRACT, ADMINISTRATIVE RULE, OR WRITTEN POLICY IF THE COMPLAINT RESOLUTION PROCESS IS SUBSTANTIALLY SIMILAR TO THE PROCESS PROVIDED FOR IN [SECTIONS 1 THROUGH 6].

(3) Except as provided in subsection (4), when informal resolution of a complaint is not possible, a person aggrieved by a state agency action may complete a complaint form and return the form to the supervising

1 authority for the agency. Within 10 working days of receiving the complaint form, the supervising authority or
2 designee shall begin a followup form as documentation for each complaint.

3 (4) An allegation of an agency action in violation of law must be made to the attorney general.

4 (5) A complaint must be reviewed by the supervising authority or designee. Resolution of the complaint
5 may include informal mediation with the complaining party or any other method for resolving the complaint. The
6 supervising authority may request an investigation of the complaint. Investigation of the complaint may involve
7 the gathering of written materials, interviews, and other information-gathering techniques. The investigator shall
8 make a recommendation to the supervising authority regarding the validity of the claim and a recommended
9 resolution.

10 (6) An investigation or review of a complaint must be completed within ~~90~~ 45 working days of receipt
11 of the complaint form. This time may be extended for another ~~90~~ 45 days to complete a more thorough review.

12 (7) Following the investigation or resolution of a complaint, the supervising authority or designee shall
13 provide a written statement to the complaining party. The statement shall describe the resolution of the
14 complaint. The statement may not provide any confidential information protected by state law or any confidential
15 information about employee discipline resulting from the complaint unless the person entitled to the
16 confidentiality waives the privilege.

17 (8) All formal complaint forms, followup forms, and investigative materials and the written statement to
18 the complaining party must be retained by the agency for 3 years.

19 (9) A state agency may not retaliate or allow, condone, or encourage others to retaliate against any
20 person for filing a complaint or participating in any other manner in a complaint proceeding.

21
22 **NEW SECTION. Section 5. Uniform public complaint form.** The following is the uniform public
23 complaint form for state agencies:

24 MONTANA STATE AGENCY

25 UNIFORM PUBLIC COMPLAINT FORM

26 Please attempt to resolve the matter informally by working with the agency. If this is not possible, fully complete
27 this form. Assistance with this form is available at your request.

28 Name of State Agency.....

29 Name of person making complaint.....

30 Address.....

1
 2
 3 Phone #
 4 Date(s) of incident(s).....
 5 Describe incident about which you are complaining (provide specifics including names, etc.).....
 6
 7
 8
 9
 10
 11
 12
 13
 14 Suggested resolution
 15
 16
 17
 18
 19
 20 Signature _____ Date _____
 21 Submit this form to the (name and address of agency's supervising authority).
 22 Date complaint form received
 23
 24 NEW SECTION. **Section 6. State agency public complaint followup form.** The following is the
 25 uniform public complaint followup form for state agencies:
 26 MONTANA STATE AGENCY UNIFORM
 27 PUBLIC COMPLAINT FOLLOWUP FORM
 28 Date complaint form received.....
 29 Received by.....
 30 Date review started.....

1	Reviewing party.....	
2	(title)	
3	(Review must start within 10 working days of receipt of complaint)	
4	Resolution (attach copy of followup letter to complaining party -- details of any employee discipline resulting from	
5	an investigation must remain confidential)	
6	
7	
8	
9	
10	
11	
12	
13	Completed by.....	Date.....
14	(title)	
15Copy to supervising authority	
16		
17	<u>NEW SECTION.</u> Section 7. Codification instruction. [Sections 1 through 6] are intended to be	
18	codified as an integral part of Title 2, chapter 11, and the provisions of Title 2, chapter 11, apply to [sections 1	
19	through 6].	
20	- END -	